IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6749 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PARESHKUMAR PRAFULCHANDRA VYAS

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 6749 of 2001

MR AD SHAH for Petitioner No. 1

MR VM PANCHOLI- ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 11/04/2002

ORAL JUDGEMENT

#. This is an application under Section 482 of the Criminal Procedure Code, 1973, to quash and set aside the FIR registered as CR No.I-353/2001 at Malaviyanagar Police Station for the offences punishable under Sections

411 and 414 of the I.P.C. and under Sections 13(1)(d) of the Prevention of Corruption Act, 1988. In fact, the said report has been culminated in Special Case No.11/2001. The present applicant faces the aforesaid Special Case for the aforesaid offences before the Special Court at Rajkot. The applicant has come out with the case in the present application that no case has been made out and he has been falsely implicated in the case. It is also contended that even on a bare look at the police papers, no offence has been constituted and yet the charge-sheet has been filed. It has also been contended that the charge-sheet has been filed before the Special Court without obtaining sanction from the competent authority in accordance with the provision made in Section 19 of the said Act. It is, therefore, contended that in view of the above position the aforesaid FIR which has been culimnated in the Special Case is required to be quashed and set aside, therefore the said prayer has been made.

#. Notice was issued at the first instance and, thereafter, rule was issued on 6.2.2002. Mr.V.M.Pancholi, learned APP appears for the State of Gujarat. I have heard the learned advocates for the parties and have perused the papers.

#. It is an admitted position that the aforesaid Special Case is pending before the Special Court at Rajkot and the Special Case includes the offence punishable under Sections, 7, 11 and 13 of the said Act.

#. Section 19 of the said Act may be reproduced for ready reference as follows :-

Section 19 (1) No Court shall take cognizance of an offence punishable under Secs.7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,--

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

#. The aforesaid provision under Section 19 of the said Act makes it clear that for taking cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15, it is necessary to have previous sanction of the competent authority as enumerated in Clause (a)(b) and (c) of Sub Section (1) of Section 19 of the said Act.

#. This means that a Court cannot take cognizance of the offence unless the requirements of Sub Section (1) of Section 19 have been complied with. In other words, the Special Court cannot take cognizance of the offence punishable under the said Act unless sanction has been accorded by the competent authority.

#. In the present case, it is an admitted position that the Investigating Officer has not obtained and produced sanction to prosecute the present petitioner for the offences punishable under Sections 7, 10, 11, 13 and 15 of the said Act. Therefore, the charge-sheet has been filed without obtaining sanction from the competent authority and the cognizance has also been taken on the basis of such charge-sheet by the learned Special Judge of the Special Court at Rajkot. This is basically illegal and not permitted in view of the provision made in Sub Section (1) of Section 19 of the said Act.

#. This shows that the charge-sheet filed and cognizance taken on it are contrary to law and, therefore, they are required to be quashed and set aside so far they relate to the offence punishable under the said Act.

#. The papers show that the charge-sheet also includes the offence punishable under Section 411 and 414 of the I.P.C.

##. As per the table attached to the Code of Criminal Procedure, 1973, the aforesaid two offences are triable by the Court of Magistrate. Therefore, when the offences are triable by any Magistrate, then in that case, the Special Court or Sessions Court cannot directly take cognizance of the said offence. Therefore, even with respect to these offences the charge-sheet is required to be quashed and set aside, which has been filed directly before the Special Court.

##. Section 190 of the said Act provides for taking cognizance of an offence by the Magistrate. Therefore, the Magistrate can take cognizance on the basis of charge-sheet submitted to him. However, so far as Sessions Courts are concerned, they cannot take cognizance of the offence unless the case is committed to

them. In the present case, the charge-sheet was not filed before the Magistrate Court and the said Court has not committed the case to the Sessions Court and, therefore, even if we take it that the Special Court has been functioning as Sessions Court, even then also Sessions Court cannot take cognizance of the offence punishable under sections 411 and 414 of the I.P.C. in absence of any order of committal by the Court of a Magistrate.

##. It is, therefore, clear that so far the offences punishable under the said Act are concerned, the Court could not have taken the cognizance of the said offence without any sanction to prosecute the petitioner. So far as the offences punishable under I.P.C. are concerned the Special Court cannot take cognizance of the said offence. In the same way, even Sessions Court could not take cognizance of these offences since the case was not committed to the Sessions Court.

##. This shows that the charge-sheet was filed contrary to the law, and is required to be quashed and set aside.

##. For the foregoing reasons, this application is allowed. The FIR being CR No.I-353/2001 of Malaviyanagar Police Station, Rajkot, which has been culminated in Special Case No.11/2001 is ordered to be quashed and set aside.

##. It would be open to the Police Investigating Officer to submit fresh charge-sheet after obtaining requisite sanction. It would also be open to the Investigating Officer to file appropriate charge-sheet for the offences punishable under the I.P.C. before the appropriate Court.

##. In the same way, it would be open to the petitioner to take appropriate contentions before appropriate Court as and when such charge-sheet is filed. Rule is made absolute to the above extent.

(D. P. BUCH, J.)

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